

#### IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference certain provisions of the Ohio Division of Air Pollution Control Permit-to-Install and Operate for Forest City Technologies Plant 4, effective June 23, 2020, as described in Section III. of this preamble. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

OEPA did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 8, 2023.

**Debra Shore,**

*Regional Administrator, Region 5.*

[FR Doc. 2023-17337 Filed 8-11-23; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2023-0375; EPA-HQ-OAR-2021-0663; FRL-11233-01-R8]

### Air Plan Approval; Wyoming; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and withdrawal of proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the portion of a Wyoming State Implementation Plan (SIP) submission addressing interstate transport for the 2015 8-hour ozone national ambient air quality standards (NAAQS). EPA is also withdrawing our prior May 24, 2022 proposed disapproval of the interstate transport portion of the Wyoming SIP submission. The “good neighbor” or “interstate transport” provision requires that each state’s SIP contain adequate provisions to prohibit emissions from within the state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states. This requirement is part of the broader set of “infrastructure” requirements, which are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA.

**DATES:** Written comments must be received on or before September 13, 2023. As of August 14, 2023, the proposed rule published on May 24, 2022, at 87 FR 31495, is withdrawn.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2023-0375, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](http://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** There are two dockets supporting this action, EPA-R08-OAR-2023-0375 and EPA-HQ-OAR-2021-0663. Docket No. EPA-R08-OAR-2023-0375 contains information specific to Wyoming, including the notice of proposed rulemaking. Docket No. EPA-HQ-OAR-2021-0663 contains additional modeling files, emissions inventory files, technical support documents, and other relevant supporting documentation regarding interstate transport of emissions for the 2015 8-hour ozone NAAQS which are being used to support this action. All comments regarding information in either of these dockets are to be made in Docket No. EPA-R08-OAR-2023-0375. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Adam Clark, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number: (303) 312-7104, email address: [clark.adam@epa.gov](mailto:clark.adam@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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### I. Background

#### A. Description of Statutory Background

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 8-hour ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm) for the 8-hour standard.<sup>1</sup> Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).<sup>2</sup> One of these applicable requirements is found in CAA section 110(a)(2)(D)(i)(I), otherwise known as the “interstate transport” or “good neighbor” provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called “prongs” within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air

quality problems under CAA section 110(a)(2)(D)(i)(I).<sup>3</sup>

#### B. Description of EPA’s 4-Step Interstate Transport Regulatory Process

EPA is using the 4-step interstate transport framework (or 4-step framework) to evaluate Wyoming’s January 3, 2019 SIP submission addressing interstate transport for the 2015 ozone NAAQS. EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior NAAQS in several regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,<sup>4</sup> the Cross-State Air Pollution Rule Update (CSAPR Update)<sup>5</sup> and the Revised Cross-State Air Pollution Rule Update (Revised CSAPR Update),<sup>6</sup> both of which addressed the 2008 ozone NAAQS.<sup>7</sup>

Shaped through the years by input from state air agencies<sup>8</sup> and other stakeholders on EPA’s prior interstate transport rulemakings and SIP actions,<sup>9</sup> as well as a number of court decisions, EPA has developed and used the following 4-step interstate transport framework to evaluate a state’s obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (*i.e.*, nonattainment and/or maintenance receptors); (2) identify

<sup>3</sup> See *North Carolina v. EPA*, 531 F.3d 896, 909–11 (D.C. Cir. 2008).

<sup>4</sup> Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (Aug. 8, 2011).

<sup>5</sup> Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (Oct. 26, 2016).

<sup>6</sup> Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021).

<sup>7</sup> In 2019, the D.C. Circuit Court of Appeals remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin v. EPA*, 938 F.3d 303, 313 (D.C. Cir. 2019). The Revised CSAPR Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), responded to the remand of the CSAPR Update in *Wisconsin* and the vacatur of a separate rule, the “CSAPR Close-Out,” 83 FR 65878 (December 21, 2018), in *New York v. EPA*, 781 F. App’x. 4 (D.C. Cir. 2019). The Revised CSAPR Update was upheld in *Midwest Ozone Group v. EPA*, 61 F.4th 187 (D.C. Cir. 2023).

<sup>8</sup> See 63 FR 57356, 57361 (October 27, 1998).

<sup>9</sup> In addition to CSAPR rulemakings, other regional rulemakings addressing ozone transport include the “NO<sub>x</sub> SIP Call,” 63 FR 57356 (October 27, 1998), and the “Clean Air Interstate Rule” (CAIR), 70 FR 25162 (May 12, 2005).

<sup>1</sup> National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

<sup>2</sup> SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

states that impact those air quality problems in other (*i.e.*, downwind) states sufficiently such that the states are considered “linked” and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multifactor analysis, to eliminate each linked upwind state’s significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

### *C. Background on EPA’s Ozone Transport Modeling Information*

In general, EPA has performed nationwide air quality modeling to project ozone design values which are used in combination with measured data to identify nonattainment and maintenance receptors at Step 1. To quantify the contribution of emissions from individual upwind states on 2023 ozone design values for the identified downwind nonattainment and maintenance receptors at Step 2, EPA has performed multiple iterations of nationwide, state-level ozone source apportionment modeling for 2023. The source apportionment modeling projected contributions to ozone at receptors from precursor emissions of anthropogenic nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) in individual upwind states.

EPA has released several documents containing projected ozone design values, contributions, and information relevant to air agencies for evaluation of interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, EPA published a notice of data availability (NODA) in which the Agency requested comment on preliminary interstate ozone transport data including projected ozone design values and interstate contributions for 2023 using a 2011 base year platform.<sup>10</sup> In the NODA, EPA used the year 2023 as the analytic year for this preliminary modeling because this year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 8-hour ozone NAAQS.<sup>11</sup> On October 27, 2017, EPA released a memorandum (October 2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and was

intended to provide information to assist states’ efforts to develop SIP submissions to address interstate transport obligations for the 2008 ozone NAAQS.<sup>12</sup> On March 27, 2018, EPA issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the October 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 ozone NAAQS at Step 1 of the 4-step interstate transport framework.<sup>13</sup> The March 2018 memorandum also included the then newly available contribution modeling data for 2023 to assist states in evaluating their impact on potential downwind air quality problems for the 2015 8-hour ozone NAAQS under Step 2 of the 4-step interstate transport framework.<sup>14</sup> EPA notes that the State of Wyoming relied upon 2023 modeling contribution data released with the March 2018 memorandum in developing its 2019 SIP submission. EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in Step 2 of the 4-step interstate transport framework, and considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step interstate transport framework.<sup>15</sup>

<sup>12</sup> See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in docket ID No. EPA-HQ-OAR-2021-0663.

<sup>13</sup> See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018 (“March 2018 memorandum”), available in docket ID No. EPA-HQ-OAR-2021-0663.

<sup>14</sup> The March 2018 memorandum, however, provided, “While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states’ obligations under the good neighbor provision. Any such determination would be made through notice-and-comment rulemaking.”

<sup>15</sup> See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 (“August 2018 memorandum”), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in docket ID No. EPA-HQ-OAR-2021-0663.

Following the release of the modeling data shared in the March 2018 memorandum, EPA performed updated modeling using a 2016-based emissions modeling platform (*i.e.*, 2016v1). This emissions platform was developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project.<sup>16</sup> This collaborative project was a multi-year joint effort by EPA, MJOs, and states to develop a new, more recent emissions platform for use by EPA and states in regulatory modeling as an improvement over the dated 2011-based platform that EPA had used to project ozone design values and contribution data provided in the 2017 and 2018 memoranda. EPA used the 2016v1 emissions to project ozone design values and contributions for 2023. On October 30, 2020, in the notice of proposed rulemaking for the Revised CSAPR Update, EPA released and accepted public comment on 2023 modeling that used the 2016v1 emissions platform.<sup>17</sup> Although the Revised CSAPR Update addressed transport for the 2008 ozone NAAQS, the projected design values and contributions from the 2016v1 platform were also useful for identifying downwind ozone problems and linkages with respect to the 2015 ozone NAAQS.<sup>18</sup>

Following the final Revised CSAPR Update, EPA made further updates to the 2016-based emissions platform to include updated onroad mobile emissions from Version 3 of EPA’s Motor Vehicle Emission Simulator (MOVES) model (MOVES3)<sup>19</sup> and updated emissions projections for electric generating units (EGUs) that reflected the emissions reductions from the Revised CSAPR Update, recent information on plant closures, and other inventory improvements. EPA published these emissions inventories on its website in September of 2021 and invited initial feedback from states and other interested stakeholders.<sup>20</sup> The construct of the updated emissions platform, 2016v2, is described in the

<sup>16</sup> The results of this modeling, as well as the underlying modeling files, are included in docket ID No. EPA-HQ-OAR-2021-0663. The 2016v1 emissions modeling technical support document is available in Docket ID No. EPA-HQ-OAR-2020-0272-0187. Both dockets are available at <https://www.regulations.gov>.

<sup>17</sup> See 85 FR 68964, 68981.

<sup>18</sup> See the Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, included in the Headquarters docket ID No. EPA-HQ-OAR-2021-0663.

<sup>19</sup> Additional details and documentation related to the MOVES3 model can be found at <https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves>.

<sup>20</sup> <https://www.epa.gov/air-emissions-modeling/2016v2-platform>.

<sup>10</sup> See Notice of Availability of the Environmental Protection Agency’s Preliminary Interstate Ozone Transport Modeling Data for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

<sup>11</sup> 82 FR 1735.

“Technical Support Document (TSD): Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform,” hereafter known as the 2016v2 Emissions Modeling TSD, and is included in Docket No. EPA–HQ–OAR–2021–0663. The EPA performed air quality modeling using the 2016v2 emissions to provide projections of ozone design values and contributions in 2023 and 2026 that reflect the effects on air quality of the 2016v2 emissions platform. EPA used the results of the 2016v2 modeling as part of our previous proposed evaluation of the Wyoming 2019 SIP submission with respect to Steps 1 and 2 of the 4-step interstate transport framework. *See* 87 FR 31495 (May 24, 2022).

EPA invited and received comments on the 2016v2 emissions inventories and modeling used to support proposals, including the proposal on Wyoming, related to interstate transport under the 2015 ozone NAAQS. In response to these comments, EPA made a number of updates to the 2016v2 inventories and model design to construct a 2016v3 emissions platform which was used to update the air quality modeling. EPA used this updated modeling to inform a final rulemaking taking final action on 21 interstate transport SIP submissions for the 2015 ozone NAAQS, which did not include Wyoming.<sup>21</sup> Details on the 2016v3 air quality modeling and the methods for projecting design values and determining contributions in 2023 and 2026 are described in the TSD titled “Air Quality Modeling Final Rule TSD—2015 Ozone NAAQS Good Neighbor Plan,” hereafter known as the Final Good Neighbor Plan AQM TSD.<sup>22</sup> Additional details related to the updated 2016v3 emissions platform are located in the TSD titled “Preparation of Emissions Inventories for the 2016v3 North American Emissions Modeling Platform,” hereafter known as the 2016v3 Emissions Modeling TSD, included in Docket ID No. EPA–HQ–OAR–2021–0663.<sup>23</sup>

In this proposed action, EPA primarily relies on modeling based on the updated 2016v3 emissions platform in evaluating Wyoming’s 2019 submission with respect to Steps 1 and

2 of the 4-step interstate transport framework, which will generally be referenced within this action as the “2016v3 modeling” for 2023 and 2026. By using the updated modeling results, EPA is using the most current and technically appropriate information for this proposed rulemaking. In this proposed action, EPA is accepting public comment on the 2016v3 modeling solely as it relates to Wyoming’s interstate transport obligations for the 2015 ozone NAAQS. EPA is not reopening the modeling in relation to any other state or regulatory action. Any comments received on the modeling that are not relevant to the evaluation of Wyoming’s interstate-transport obligations will be treated as beyond the scope of this action.

#### *D. EPA’s Approach to Evaluating Interstate Transport SIPs for the 2015 Ozone NAAQS*

EPA proposes to apply a consistent set of policy judgments across all states for purposes of evaluating interstate transport obligations and the approvability of interstate transport SIP submissions for the 2015 ozone NAAQS under CAA section 110(a)(2)(D)(i)(I). These policy judgments conform with relevant case law and past agency practice as reflected in CSAPR and related rulemakings. Employing a nationally consistent approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving many smaller contributors. Effective policy solutions to the problem of interstate ozone transport going back to the NO<sub>x</sub> SIP Call have necessitated the application of a uniform framework of policy judgments in order to ensure an “efficient and equitable” approach. *See EME Homer City Generation, LP v. EPA*, 572 U.S. 489, 519 (2014).

The remainder of this section describes EPA’s analytic framework with respect to analytic year, definition of nonattainment and maintenance receptors, selection of contribution threshold, and multifactor control strategy assessment.

#### **1. Selection of Analytic Year**

In general, the states and EPA must implement the interstate transport provision in a manner “consistent with the provisions of [title I of the CAA.]” *See* CAA section 110(a)(2)(D)(i). This requires, among other things, that these obligations are addressed consistently with the timeframes for downwind areas to meet their CAA obligations. With respect to ozone NAAQS, under CAA section 181(a), this means obligations must be addressed “as expeditiously as

practicable” and no later than the schedule of attainment dates provided in CAA section 181(a)(1).<sup>24</sup> Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin*, remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *See* 938 F.3d 303, 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland v. EPA* that cited the *Wisconsin* decision in holding that EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for EPA’s denial of a petition under CAA section 126(b) *Maryland v. EPA*, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020) (*Maryland*). The court noted that “section 126(b) incorporates the Good Neighbor Provision,” and, therefore, “EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the next downwind attainment deadline. Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.” *Id.* at 1204 (emphasis added). EPA interprets the court’s holding in *Maryland* as requiring the states and the Agency, under the good neighbor provision, to assess downwind air quality as expeditiously as practicable and no later than the next applicable attainment date,<sup>25</sup> which is currently the 2015 ozone NAAQS Moderate area attainment date of August 3, 2024 under CAA section 181 for ozone nonattainment.<sup>26</sup> Thus, 2023 remains

<sup>24</sup> For attainment dates for the 2015 8-hour ozone NAAQS, refer to CAA section 181(a), 40 CFR 51.1303, and Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

<sup>25</sup> We note that the court in *Maryland* did not have occasion to evaluate circumstances in which EPA may determine that an upwind linkage to a downwind air quality problem exists at steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See Wisconsin*, 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the interstate transport provision.

<sup>26</sup> *See* CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015

<sup>21</sup> “Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards,” 88 FR 9336 (February 13, 2023), and “Federal ‘Good Neighbor Plan’ for the 2015 Ozone National Ambient Air Quality Standards,” 88 FR 36654 (June 5, 2023).

<sup>22</sup> Air Quality Modeling Final Rule Technical Support Document—2015 Ozone NAAQS Good Neighbor Plan in Docket ID No. EPA–R08–OAR–2023–0375.

<sup>23</sup> 2016v3 Emissions Modeling TSD in Docket ID No. EPA–HQ–OAR–2021–0663.

the appropriate year for analysis of interstate transport obligations for the 2015 ozone NAAQS because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024 Moderate area attainment date for the 2015 ozone NAAQS.

EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS was August 3, 2021. Under the *Maryland* holding, any necessary emissions reductions to satisfy interstate transport obligations should have been implemented by no later than this date. At the time of the statutory deadline to submit interstate transport SIPs (October 1, 2018), many states relied on EPA's modeling of the year 2023, and no state provided an alternative analysis using a 2021 analytic year (or the prior 2020 ozone season). However, EPA must act on SIP submissions using the information available at the time it takes such action. In this circumstance, EPA does not believe it would be appropriate to evaluate states' obligations under CAA section 110(a)(2)(D)(i)(I) as of an attainment date that is wholly in the past, because the Agency interprets the interstate transport provision as forward looking. *See* 86 FR 23074; *see also Wisconsin*, 938 F.3d at 322 (rejecting Delaware's argument that EPA should have used an analytic year of 2011 instead of 2017). Consequently, in this proposal EPA will use the analytical year of 2023 to evaluate Wyoming's CAA section 110(a)(2)(D)(i)(I) SIP submission with respect to the 2015 ozone NAAQS.<sup>27</sup>

## 2. Step 1 of the 4-Step Interstate Transport Framework

In Step 1, EPA identifies monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS in the 2023 analytic year. Where EPA's analysis shows that a site does not fall under the definition of a

nonattainment or maintenance receptor, that site is excluded from further analysis under EPA's 4-step interstate transport framework. For sites that are identified as a nonattainment or maintenance receptor in 2023, EPA proceeds to the next step of the 4-step interstate transport framework by identifying which upwind states contribute to those receptors above the contribution threshold.

EPA's approach to identifying ozone nonattainment and maintenance receptors in this action gives independent consideration to both the "contribute significantly to nonattainment" and the "interfere with maintenance" prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina*.<sup>28</sup>

EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the CSAPR Update, where EPA defined nonattainment receptors as those areas that both currently measure nonattainment and that EPA projects will be in nonattainment in the analytic year (*i.e.*, 2023).<sup>29</sup>

In addition, in this proposal, EPA identifies a receptor to be a "maintenance" receptor for purposes of defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 136 (D.C. Cir. 2015) (*EME Homer City II*).<sup>30</sup> Specifically, EPA identified maintenance receptors as those receptors that would have difficulty maintaining the relevant

NAAQS in a scenario that takes into account historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the "maximum" future design value at each receptor based on a projection of the maximum measured design value over the relevant period. EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.*, ozone conducive meteorology). EPA also recognizes that previously experienced meteorological conditions (*e.g.*, dominant wind direction, temperatures, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Nonattainment receptors are also, by definition, maintenance receptors, and so EPA often uses the term "maintenance-only" to refer to those receptors that are not nonattainment receptors. Consistent with the concepts for maintenance receptors, as described earlier, EPA identifies "maintenance-only" receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values.<sup>31</sup> In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as "maintenance-only" receptors, even if they are currently measuring nonattainment based on the most recent official design values.

Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

<sup>27</sup> EPA recognizes that by the time final action is taken with respect to this SIP submission, the 2023 ozone season will likely be wholly in the past. However, as discussed in section III., the available modeling information indicates that our analysis would not change as to Wyoming for any later year.

<sup>28</sup> *See North Carolina v. EPA*, 531 F.3d at 910–11 (holding that the EPA must give "independent significance" to each prong of CAA section 110(a)(2)(D)(i)(I)).

<sup>29</sup> *See* 81 FR 74504 (October 26, 2016). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. *See* 70 FR 25241, 25249 (January 14, 2005); *see also North Carolina*, 531 F.3d at 913–14 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

<sup>30</sup> *See* 76 FR 48208 (August 8, 2011). CSAPR Update and Revised CSAPR Update also used this approach. *See* 81 FR 74504 (October 26, 2016) and 86 FR 23054 (April 30, 2021).

<sup>31</sup> The Agency often uses the terms maintenance receptor and maintenance-only receptor interchangeably when discussing maintenance receptors that are not also nonattainment receptors.

The Agency has also taken a closer look at measured ozone levels at monitoring sites in 2021 and 2022 for the purposes of informing the identification of additional receptors in 2023. As explained in more detail in the February 13, 2022 final action disapproving 19 states' good neighbor SIP submissions, and partially approving and partially disapproving 2 states' good neighbor SIP submissions, *see* 88 FR 9349–50, we find there is a basis to consider certain sites with elevated ozone levels that are not otherwise identified as receptors to be an additional type of maintenance-only receptor given the likelihood that ozone levels above the NAAQS could persist at those locations through at least 2023. We refer to these as violating-monitor maintenance-only receptors ("violating monitors"). In this action, EPA proposes to use certified monitoring data as an additional method to identify maintenance-only receptors. In the case of Wyoming, this analysis confirms that the state is not projected to be linked to any violating-monitor receptors. EPA is not reopening this methodology, except to the extent of its application to Wyoming, nor in relation to the evaluation of any other state's good neighbor obligations for the 2015 ozone NAAQS. Any such comments on those topics will be treated as beyond the scope of this action.

### 3. Step 2 of the 4-Step Interstate Transport Framework

In Step 2 EPA quantifies the contribution of each upwind state to each receptor in the 2023 analytic year. The contribution metric used in Step 2 is defined as the average impact from each state to each receptor on the days with the highest ozone concentrations at the receptor based on the 2023 modeling. If a state's contribution value does not equal or exceed the threshold of 1 percent of the NAAQS (*i.e.*, 0.70 ppb for the 2015 ozone NAAQS), the upwind state is not "linked" to a downwind air quality problem, and EPA therefore concludes that the state does not contribute significantly to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's contribution equals or exceeds the 1 percent threshold, the state's emissions are further evaluated in Step 3, considering both air quality and cost as part of a multi-factor analysis, to determine what, if any, emissions might be deemed "significant" and, thus, must be eliminated pursuant to the requirements of CAA section 110(a)(2)(D)(i)(I).

In this proposed action, EPA relies in the first instance on the 1 percent of the NAAQS threshold for the purpose of evaluating a state's contribution to nonattainment or maintenance of the 2015 ozone NAAQS at downwind receptors. This is consistent with the Step 2 approach that EPA applied in CSAPR for the 1997 ozone NAAQS, which has subsequently been applied in the CSAPR Update and Revised CSAPR Update when evaluating interstate transport obligations for the 2008 ozone NAAQS. EPA continues to find 1 percent of the NAAQS to be an appropriate threshold. For ozone, as EPA found in the CAIR, CSAPR, and CSAPR Update, a portion of the nonattainment problems from anthropogenic sources in the U.S. results from the combined impact of relatively small contributions, typically from multiple upwind states and, in some cases, substantially larger contributions from a subset of particular upwind states, along with contributions from in-state sources. EPA's analysis shows that much of the ozone transport problem in the United States is still the result of the collective impacts of contributions from upwind states. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution to the downwind nonattainment and maintenance problems to which they collectively contribute. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. *See* 81 FR 74518; *see also* 86 FR 23085 (reviewing and explaining rationale from CSAPR, 76 FR 48237–38, for selection of 1 percent threshold).

### 4. Step 3 of the 4-Step Interstate Transport Framework

Consistent with EPA's longstanding approach to eliminating significant contribution and interference with maintenance, at Step 3, a multifactor assessment of potential emissions controls is conducted for states linked at Steps 1 and 2. EPA's analysis at Step 3 in prior Federal actions addressing interstate transport requirements has primarily focused on an evaluation of cost-effectiveness of potential emissions controls (on a marginal cost-per-ton basis), the total emissions reductions that may be achieved by requiring such controls (if applied across all linked upwind states), and an evaluation of the

air quality impacts such emissions reductions would have on the downwind receptors to which a state is linked; other factors may potentially be relevant if adequately supported. In general, where EPA's or state-provided alternative air quality and contribution modeling establishes that a state is linked at Steps 1 and 2, it will be insufficient at Step 3 for a state merely to point to its existing rules requiring control measures as a basis for SIP approval. In general, the emissions-reducing effects of all existing emissions control requirements are already reflected in the future year projected air quality results of the modeling for Steps 1 and 2. If the state is shown to still be linked to one or more downwind receptor(s) despite these existing controls, but that state believes it has no outstanding good neighbor obligations, EPA expects the state to provide sufficient justification to support a conclusion by EPA that the state has adequate provisions prohibiting "any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will" "contribute significantly to nonattainment in, or interfere with maintenance by," any other state with respect to the NAAQS. *See* CAA section 110(a)(2)(D)(i)(I). While EPA has not prescribed a particular method for this assessment, EPA expects states at a minimum to present a sufficient technical evaluation. This would typically include information on emissions sources, applicable control technologies, emissions reductions, costs, cost effectiveness, and downwind air quality impacts of the estimated reductions, before concluding that no additional emissions controls should be required.<sup>32</sup>

### 5. Step 4 of the 4-Step Interstate Transport Framework

At Step 4, states (or EPA) develop permanent and federally-enforceable control strategies to achieve the emissions reductions determined to be necessary at Step 3 to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS. For a state linked at Steps 1 and 2 to rely on an

<sup>32</sup> As examples of general approaches for how such an analysis could be conducted for their sources, states could look to the CSAPR Update, 81 FR 74504, 74539–51; CSAPR, 76 FR 48208, 48246–63; CAIR, 70 FR 25162, 25195–229; or the NO<sub>x</sub> SIP Call, 63 FR 57356, 57399–405. *See also* Revised CSAPR Update, 86 FR 23054, 23086–23116. Consistently across these rulemakings, the EPA has developed emissions inventories, analyzed different levels of control stringency at different cost thresholds, and assessed resulting downwind air quality improvements.

emissions control measure at Step 3 to address its interstate transport obligations, that measure must be included in the state's SIP so that it is permanent and federally enforceable. See CAA section 110(a)(2)(D) ("Each such [SIP] shall . . . contain adequate provisions . . ."). See also CAA section 110(a)(2)(A); *Committee for a Better Arvin v. EPA*, 786 F.3d 1169, 1175–76 (9th Cir. 2015) (holding that measures relied on by a state to meet CAA requirements must be included in the SIP).

## II. Wyoming SIP Submission Addressing Interstate Transport of Air Pollution for the 2015 8-Hour Ozone NAAQS

### A. Summary of Wyoming's 2015 Ozone Interstate Transport SIP Submission

On January 3, 2019, Wyoming submitted a SIP submission to EPA addressing the infrastructure requirements of CAA section 110(a)(1) and (2), including the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements, for the 2015 8-hour ozone NAAQS.<sup>33</sup> The SIP submission provided Wyoming's analysis of the State's impact to downwind states and concluded that emissions from Wyoming will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in other states in 2023.<sup>34</sup> The SIP submission cited EPA's 4-step framework, but also included a "weight-of-evidence" analysis.<sup>35</sup> Based on the results of its "weight-of-evidence" analysis at Step 2, Wyoming's 2019 SIP submission concluded that emissions from the State are not linked to a downwind projected nonattainment or maintenance receptor and therefore do not contribute to nonattainment or interfere with the maintenance of the 2015 ozone NAAQS in any downwind state.<sup>36</sup>

### B. Prior Notices Related to Wyoming's SIP Submission

On May 24, 2022, the EPA proposed disapproval of the portion of Wyoming's January 3, 2019 SIP submission addressing CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. 87 FR 31495. In EPA's

proposed disapproval, as part of the evaluation of Wyoming's submission, we considered the most recently updated modeling platform available at the time, 2016v2, which established one linkage from Wyoming to the Douglas County nonattainment receptor in Colorado (Site ID 80350004), with a projected 2023 contribution from Wyoming of 0.81 ppb.<sup>37</sup> When EPA completed updated modeling for 2023 and 2026 using the 2016v3 platform, Wyoming was not projected to be linked to any downwind nonattainment or maintenance-only receptors in 2023, with a maximum projected contribution of 0.68 ppb at the Douglas County nonattainment receptor in 2023.<sup>38</sup> On January 31, 2023, EPA signed a final rulemaking, finalizing disapproval of 19 SIP submissions, and partially approved and partially disapproved two SIP submissions, for inadequately addressing the good neighbor provision for the 2015 ozone NAAQS and noted that EPA was not taking final action at that time on two SIP submissions for which EPA had proposed disapproval, including Wyoming's.<sup>39</sup> Based on the updated modeling using the 2016v3 platform, discussed in section I.C. above, as well as EPA's evaluation in section III. below, EPA is now withdrawing our May 24, 2022 proposed disapproval of the 110(a)(2)(D)(i)(I) portion of Wyoming's January 3, 2019 SIP submission, at 87 FR 31495.

## III. EPA's Evaluation

Wyoming's 2019 SIP submission addressing CAA section 110(a)(2)(D)(i)(I) for the 2015 Ozone NAAQS relies on the 4-step framework and the analytic year 2023 contribution modeling results released with the March 2018 memorandum to conclude that Wyoming does not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state at Step 2 of the 4-step framework.

As described in section I.C. of this proposal, EPA performed air quality modeling to project ozone design values and contributions for 2023 and 2026 using the 2016v3 emissions platform. EPA proposes to rely primarily on this updated modeling in evaluating Wyoming's transport SIP submission. The design values and contributions from the updated modeling were

examined to determine if Wyoming contributes at or above the threshold of 1 percent of the 2015 ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor.<sup>40</sup> The data<sup>41</sup> indicate that the highest contributions from Wyoming to downwind nonattainment and maintenance-only receptors are 0.68 ppb and 0.67 ppb in 2023, respectively, and 0.40 ppb and 0.59 ppb in 2026, respectively.<sup>42</sup> EPA's evaluation of Wyoming's contributions to violating-monitor maintenance-only receptors indicate the State's maximum contribution is 0.42 ppb in 2023.<sup>43</sup>

EPA's evaluation of measured and monitored data and contribution values in 2023 and 2026 indicates that the contribution to ozone concentrations in other states from emissions in Wyoming will not equal or exceed the contribution threshold of 0.70 ppb. Thus, EPA proposes to find that the State does not impact downwind air quality problems such that it should be considered "linked" at Step 2 of the 4-step framework, and therefore does not warrant further review and analysis at Steps 3 and 4. The results of EPA's evaluation are consistent with the conclusion drawn by Wyoming in the 2019 SIP submission that emissions from sources in Wyoming will not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. For these reasons, EPA is proposing to approve Wyoming's 2019 SIP submission with regard to the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I).

## IV. Proposed Action

Based on EPA's evaluation of the impact of air emissions from Wyoming

<sup>40</sup> EPA need not assess the data and analysis in Wyoming's submission, as EPA's updated modeling corroborates Wyoming's conclusion that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

<sup>41</sup> Design values and contributions at individual monitoring sites nationwide are provided in the file Final GNP O3 DVs Contributions, which is included in docket ID No. EPA-R08-OAR-2023-0375.

<sup>42</sup> EPA's analysis indicates that in 2023 Wyoming will have a 0.68 ppb impact at the projected nonattainment receptor in Douglas County, Colorado (site ID 80350004), and a 0.67 ppb impact at the projected maintenance-only receptor in Larimer County, Colorado (site ID 80690011). EPA's analysis indicates maximum 2026 Wyoming emission impacts of 0.40 ppb at projected nonattainment receptors in Jefferson County, Colorado (sites 80590006 and 80590011), and 0.59 at a projected maintenance receptor in Larimer County, Colorado (site 80690011).

<sup>43</sup> EPA's analysis indicates that in 2023 Wyoming will have a 0.42 ppb impact at the violating-monitor maintenance-only receptor in Arapahoe County, Colorado (site ID 80050002).

<sup>33</sup> See Wyoming State Implementation Plan, Interstate Transport, To Satisfy the Requirements of Clean Air Act 110(a)(2)(i)(I) for the 8-Hour Ozone NAAQS Promulgated in October 2015, December 2018, located in the docket for this rulemaking at [regulations.gov](https://www.regulations.gov), Docket No. EPA-R08-OAR-2023-0375.

<sup>34</sup> Wyoming State Implementation Plan, Attachment B at 10.

<sup>35</sup> See generally *id.* at 3–10.

<sup>36</sup> *Id.* at 9–10.

<sup>37</sup> 87 FR 31505.

<sup>38</sup> See Final Good Neighbor Plan AQM TSD in Docket ID No. EPA-R08-OAR-2023-0375.

<sup>39</sup> See Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards, 88 FR 9336 (February 13, 2023).

to downwind states using 2023 analytic year modeling as described in this document, EPA is proposing to approve Wyoming's January 3, 2019 SIP submission as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. EPA is seeking public comment on the issues discussed in this proposed rule. We will accept comments from the public on this proposal for the next 30 days.

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an

Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies." Wyoming did not evaluate environmental justice considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

Section 307(b)(1) of the CAA governs judicial review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." For locally or regionally applicable final actions, the CAA reserves to EPA complete discretion to

decide whether to invoke the exception in (ii).<sup>44</sup>

If EPA takes final action on this proposed rulemaking, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action (to the extent a court finds the action to be locally or regionally applicable) is based on a determination of "nationwide scope or effect" within the meaning of CAA section 307(b)(1). Through this rulemaking action (in conjunction with a series of related actions on other SIP submissions for the same CAA obligations), EPA interprets and applies section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, EPA is applying here (and in other proposed and finalized actions related to the same obligations) the same, nationally consistent 4-step framework for assessing good neighbor obligations for the 2015 ozone NAAQS. EPA relies on a single set of updated, 2016-base year photochemical grid modeling results of the year 2023 as the primary basis for its assessment of air quality conditions and contributions at steps 1 and 2 of that framework. Further, EPA proposes to determine and apply a set of nationally consistent policy judgments to apply the 4-step framework. EPA has selected nationally uniform analytic years for this analysis and is applying a nationally uniform approach to nonattainment and maintenance receptors and a nationally uniform approach to contribution threshold analysis.<sup>45</sup> For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of nationwide scope or

<sup>44</sup> In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

<sup>45</sup> A finding of nationwide scope or effect is also appropriate for actions that cover states in multiple judicial circuits. In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the "nationwide scope or effect" exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95-294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402-03.

effect for purposes of CAA section 307(b)(1).<sup>46</sup>

<sup>46</sup> If EPA takes a consolidated, single final action on this and any other proposed SIP actions with respect to obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS, that action may be nationally applicable, and EPA would also anticipate that in that instance, in the

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

alternative, the Administrator would make and publish a finding that such final action is based on a determination of nationwide scope or effect.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 27, 2023.

**K.C. Becker,**  
*Regional Administrator, Region 8.*

[FR Doc. 2023–16441 Filed 8–11–23; 8:45 am]

**BILLING CODE 6560–50–P**